

## AGNIFILO INTRATER

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April 28, 2025

**VIA ECF**

Hon. Arun Subramanian  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**Re: *United States v. Combs*, 24-cr-542 (AS)**

Dear Judge Subramanian:

During the Court conference on Friday, April 25, 2025, defense counsel raised a concern that the government was adding racketeering acts in enterprise letters that were not voted by the Grand Jury. The defense argued that if the government was seeking to try Mr. Combs on acts not found by the Grand Jury, this would violate his Fifth Amendment right to Grand Jury indictment. The Court inquired as to any precedent that would fit counsel's argument. Counsel responded that we would submit a short letter addressing the Court's inquiry on this sole point.

Although we have not identified authority focused on the precise facts here, the Second Circuit decision in *United States v. Basciano*, 599 F.3d 184 (2d Cir. 2010), cited in our April 23, 2025, letter, generally supports the proposition that the government cannot add to or change the pattern of racketeering activity voted by the grand jury. The Court stated that "pattern is an essential element of racketeering. Once a grand jury has charged a pattern of racketeering common to a number of defendants, only the grand jury, not the court, may decide whether an individual defendant should be charged with a different pattern after co-defendants plead guilty." *Id.* at 206. "[O]ur concern is with the government substituting a different pattern of racketeering for the pattern charged by the grand jury." *Id.* By adding acts in the enterprise letters not found by the grand jury, the government has violated the holding in *Basciano*.

Assuming the government is permitted to argue that the jury may convict based on racketeering acts not presented to the grand jury we reserve the right to raise this issue again either in a Fed. R. Crim. P. 29 context or in connection with the charge conference. We appreciate the Court's consideration.

Respectfully submitted,



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Marc Agnifilo  
Teny Geragos  
AGNIFILO INTRATER  
445 Park Ave., 7th Fl.

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Page 2 of 2

New York, NY 10022  
(646) 205-4350  
marc@agilawgroup.com  
teny@agilawgroup.com

Alexandra A.E. Shapiro  
Jason A. Driscoll  
SHAPIRO ARATO BACH LLP  
1140 Avenue of the Americas,  
17th Fl.  
New York, NY 10036  
(212) 257-4881  
ashapiro@shapiroarato.com  
jdriscoll@shapiroarato.com

Anna Estevao  
SHER TREMONTE LLP  
90 Broad St., 23rd Fl.  
New York, NY 10004  
(212) 202-2600  
aestavao@shertemonte.com

Brian Steel  
The Steel Law Firm, P.C.  
1800 Peachtree Street, Ste. 300  
Atlanta, GA 30309  
(404) 605-0023

cc: All counsel (by ECF)